

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Nels R. Raabolle,

Debtor: Chapter 13 Case
Case No. BKY 02-92595-GFK.

**NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY**

TO: The Debtor, Debtor's Attorney, Chapter 13 Trustee, United States Trustee, and the other parties in interest specified in Local Rule 9013-3(a).

1. **Bank One, Wisconsin** fka Bank One Milwaukee, N.A. (**Movant**), a secured creditor of the Debtor herein, by its undersigned attorney, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 o'clock a.m., on September 20, 2004, before the Honorable Gregory F. Kishel, in Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, MN, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 9, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT A HEARING.

4. This motion is filed pursuant to Bankruptcy Rule 4001 and Local Rule 9013-2 and Movant seeks relief from the automatic stay of 11 U.S.C. §362 with respect to certain real property owned by the Debtor and subject to Movant's first mortgage lien.

5. The Petition commencing this Chapter 13 Case was filed on September 13, 2002, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157(a), §1334, 11 U.S.C. §362(d), Bankruptcy Rule 5005, Local Rule 1070-1 and other applicable rules. This proceeding is a core proceeding.

6. By certain mortgage dated June 20, 1996, in the original principal amount of

\$13,000.00 (**Mortgage**), Movant acquired a mortgagee's interest in the following real property (**Property**):

Lot 3, Block 1, Highland Town Homes, subject to the burdens and together with the benefits of the Declaration of Easements filed as Document No. 412438 and Declaration of Covenants, Conditions and Restrictions filed as Document No. 412439..

The Mortgage was filed for record in the office of the County Recorder, in and for Washington County, Minnesota, on July 16, 1996, as document number 894387.

7. The terms of Debtor's confirmed Chapter 13 plan (**Plan**) require Debtor to make post-petition Mortgage payments directly to Movant when due. Debtor is delinquent with respect to post-petition Mortgage payments for the months of May, 2004 through August, 2004 in a total amount of \$770.67, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. Debtor's Four (4) month delinquency under the terms of the Mortgage constitute cause, within the meaning of 11 U.S.C. §362(d)(1), entitling Movant to relief from the automatic stay. Movant does not have, and has not been offered, adequate protection of its interest in the Property.

WHEREFORE, Movant, by its undersigned attorney, moves the Court for an order modifying the automatic stay of 11 U.S.C. §362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as the Court may deem to be just, fair and

equitable.

Dated this 30th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle, Atty. Reg. #130126
Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101-1197
Telephone: (651) 291-8955

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Nels R. Raabolle,

Debtor: Chapter 13 Case
Case No. BKY 02-92595-GFK.

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM STAY

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

I, Michael M. [Signature], your affiant, being first duly sworn on
oath, state as follows:

1. I am an employee of **Bank One, Wisconsin** Bank One Milwaukee, N.A.
(**Movant**), and I have personal knowledge of the facts stated herein.

2. I make this Affidavit in support of a motion to lift, modify or condition the
bankruptcy stay.

3. Debtor is the mortgagor on a mortgage dated June 20, 1996 which covers real property located in Washington County and legally described as follows:

Lot 3, Block 1, Highland Town Homes, subject to the burdens and together with the benefits of the Declaration of Easements filed as Document No. 412438 and Declaration of Covenants, Conditions and Restrictions filed as Document No. 412439.,

and which is commonly known as: 7006 Homestead Avenue South, Cottage Grove, MN 55016. The mortgage was given to secure a promissory note. Copies of the note and the mortgage are attached hereto as Exhibit A and Exhibit B, respectively, and incorporated herein by this reference.

4. On or about September 13, 2002, Debtor filed a Petition under Chapter 13 of Title 11 U.S. Code in the United States Bankruptcy Court for the District of Minnesota.

5. Movant filed a Proof of Security Interest Claim with the Court on or about April 21, 2003.

6. Debtor's Chapter 13 Plan (**Plan**) provides that Debtor will maintain payments due during the pendency of this case and cure an existing default within a reasonable time.

7. Debtor has failed to make Four (4) payments, which were due during the pendency of this case, resulting in an arrearage of \$770.67, including late charges. Movant has also incurred attorney's fees and costs in the bringing of this motion.

8. I have read the Motion in this matter, and it is true to the best of my knowledge,
information and belief.

9. Further, I saith not.

Theresa Marie Gnost

Subscribed and sworn to before me
this 26 day of August, 2004.

John P. Pugh
Notary Public



Borrower: RAABOLLE, NELS

Loan Number:

121 122 33 0000 802287

MN

Bank One Home Equity LineSM
Agreement and Disclosure Statement

BANK ONE

Page 1

Defined Words

In this Agreement and the monthly statement, "Bank One", "we", "us" and "our" mean Bank One, Milwaukee, N.A. "You" and "your" mean each and all of those persons other than Bank One who signs that Agreement. "Account" means the Bank One Home Equity Line Account. "Checks" means checks that we give you to use with the Account. "Card" means the card that we give you to use with the Account. You might not receive a Card.

Using the Account

You may use the Account to purchase goods and services from businesses that accept the Card, or to get money from banks and machines that accept the Card. You also may write Checks against the Account. When you purchase anything, get money, or write Checks against the Account, you get an "advance".

Mortgage

You are giving us a mortgage on the real estate at:

7006 HOMESTEAD AVE S. COTTAGE GROVE, MN 55016

The mortgage secures this Agreement. You will pay all of our title, appraisal and other costs and fees.

Setoff

Whenever an amount under this Agreement is due, we may use money in any of your deposit accounts with us to pay that amount.

Security Interest

You are also giving us a security interest in the following property:

n/a

The security interest secures this Agreement. If you have given us or will give us a security interest for any other loans, that security interest also secures this Agreement.

Advances and Payments in the Draw Period

You may get advances on the Account up to the amount of your Credit Limit until the end of the monthly billing cycle that is 5TH years after you open the Account. That period is called the "Draw Period". We may extend the Draw Period by notifying you in writing. Each month during the Draw Period, you will pay us at least the greater of \$100 or 1.000 % of the new balance shown on your monthly statement. You will pay us by the date shown on your monthly statement. This minimum payment will not fully repay the principal that is outstanding on your Account. You will pay us the full unpaid balance of your Account if the new balance on your monthly statement is less than \$100 or if the Account is cancelled.

Repayment Period

After the Draw Period ends, you will not be able to get advances. You will then pay us the unpaid balance of your Account. The unpaid balance includes principal plus interest at the ☒ variable or ☐ fixed rate shown below. You will pay us in equal monthly payments that are enough to pay the Account in full over the next 10 years. That period is called the "Repayment Period". You will pay us by the date shown on your monthly statement. If the rate of finance charge is a variable rate, your monthly payment will be based on the rate at the end of the Draw Period. This minimum payment may not fully repay the principal that is outstanding on your Account. You will then be required to pay the entire balance in a single "balloon" payment. You will pay us all principal, finance charge and other charges and fees in full at the end of the Repayment Period.

Other Payment Rules

Each month you also will pay us any fees and charges on the Account. If you prepay any amount, you still have to pay the monthly payments. If you pay any principal amount during the Draw Period, you may get new advances in that amount or less.

Locking

At any time during the Draw Period, if we agree you may change the payments for all or part of the unpaid balance of your Account. You may choose to pay us that amount plus a fixed rate of finance charge in equal monthly payments over not more than 5 years. That is called a "lock". At any one time, you may not have more than 5 amounts that you lock. We will set the term, the payment amount and the fixed rate for each lock, and disclose them to you. You will pay us according to the disclosure for each lock (whether or not you sign the disclosure), plus your payment for any amount that you do not lock. If you prepay any amount, you still have to pay the monthly payments. If you pay any principal, you may get new advances in that amount or less that are not locked. The rules for any lock are in this Locking section, and are not in the above sections called Advances and Payments in the Draw Period and Repayment Period or in the next section called Annual Percentage Rate.

Annual Percentage Rate. The ANNUAL PERCENTAGE RATE includes only interest and not other costs.

☐ **Fixed Rate**

During the Draw Period, the daily periodic rate that we use to calculate the FINANCE CHARGE is n/a % (corresponding ANNUAL PERCENTAGE RATE n/a %).

During the Repayment Period, the daily periodic rate that we use to calculate the FINANCE CHARGE is 1/365th of the total of:

- (i) the average weekly yield on U.S. Treasury Securities adjusted to a constant maturity of 5 years, set on the first day of the Repayment Period, as published by the Board of Governors of the Federal Reserve System for the most recently available week which includes the 15th day of the month (called the "Index"), plus (ii) n/a % (called the "Margin").

The rate may increase if the total of the Index plus the Margin is more than the corresponding ANNUAL PERCENTAGE RATE stated above on the first day of the Repayment Period. That day is the effective date of any change. If the rate increases, the monthly payments will increase. If the Index increases, the daily periodic rate and the monthly payment may increase.

☒ **Variable Rate**

The daily periodic rate that we use to calculate the FINANCE CHARGE may change from month to month. The daily periodic rate is 1/365 of the total of the (i) Index plus (ii) 4.300 %. "Index" means the average weekly Bank Prime Loan Rate as published by the Board of Governors of the Federal Reserve System for the week which includes the 15th day of the month. That rate applies to the next statement period.

If the Index increases, the daily periodic rate and the monthly payment will increase. Any change in the rate will apply to both the unpaid balance and new advances. The current Index rate is 8.250 %. The current daily periodic rate is 0.034 % (corresponding ANNUAL PERCENTAGE RATE 12.550 %). The ANNUAL PERCENTAGE RATE will not exceed 21.000 %.

SEE BACK SIDE AND THE OTHER PAGES FOR OTHER TERMS

Applying Payments

We will apply payments based on a weighted average of the payments for each locked and unlocked amount:

1. First to the finance charge.
2. Second to the unpaid principal balance.
3. Third to other fees and charges.

We will apply overpayments first to unlocked amounts, then to locks in the order that we choose.

Fees and Charges

You will pay us the following fees and charges:

1. Returned Check Charge.....\$ 15.00 , for each check or other payment that is returned and not paid.
2. Late Payment Charge.....\$ 25.00 or 5.00% of the late payment, if you do not pay us by 15 days after the payment is due.
3. Stop Payment Charge.....\$ 10.00 , for each Check that is stopped.
4. Annual Fee.....\$ 50.00
5. Property Appraisal Fee.....\$ 18.00
6. Title Examination.....\$ 150.00
7. Title Insurance.....\$ n/a
8. Filing Fees.....\$ 87.00
9. Mortgage Registration Tax.....\$ 29.90
10. Commitment Fee (FINANCE CHARGE).....\$ n/a
11. Lock Fee (FINANCE CHARGE).....\$ 25.00
12. Overlimit Fee.....\$ 10.00
13. Flood Certification.....\$ 11.50

Other Agreements

1. You will not obtain any credit secured by any mortgage or security interest that is superior to our mortgage or security interest.
2. You will not get an advance to make a payment under this Agreement, but you may get an advance to pay any lock in full.
3. You will notify us whenever you change your address.
4. You will not make a claim against us if anyone else refuses to honor or accept any Check or Card.
5. We may ask others about your credit, and give others information about your Account if they make a credit inquiry.
6. We may accept partial payments or late payments without losing any of our rights. We may accept checks and other payments marked "payment in full" without losing any of our rights.
7. You will tell us immediately if any Check or Card is lost or stolen.
8. If we ask from time to time, you will give us your current signed financial statement in a form that we select.

Acceptance

By signing below:

1. You agree to this Agreement and all present and future lock disclosures, and accept an Account in the amount of \$13,000.00 (called the "Credit Limit").
2. You agree that you received a completed copy of this Agreement.
3. ☐ If checked, you agree to maintain deposit account number n/a at Bank One, and we may charge that account for any amounts due under this Agreement.

Co-Signer: Read the important notice on Page 4 before you sign this Agreement.

SEE THE FRONT SIDE AND THE OTHER PAGES FOR OTHER TERMS

Nels Ronald Raabolle
Customer NELS RONALD RAABOLLE

JUNE 20, 1996
Date

Customer

Date

Co-Signer

Date

Co-Signer

Date

BANK ONE, MILWAUKEE, N.A.

By CHRIS REINKE/THM CR

For use in State of Minnesota
SSN: 469-46-4985

1st Copy - Bank 2nd Copy - Bank
3rd Copy - Customer 4th Copy - Customer

WASH TITLE & REAL ESTATE SERVICES, INC.
400 West 7th Street, Suite 200
Minneapolis, MN 55405

121 898 38 0000 04 1449 894387 05052693

OFFICE OF
COUNTY RECORDER
WASHINGTON COUNTY
FILED 04

JUL 16 12 55 PM '96
DOC. 894387

CINDY KODSHANN
COUNTY RECORDER

RESIDENTIAL MORTGAGE

THIS INDENTURE, is made this 20TH day of JUNE, 1996, by and between
NELS RONALD RAABOLLE
(married status) AS A SINGLE PERSON ("Borrower" whether one or more), and Bank One, Milwaukee, N.A.
a national banking association under the laws of the United States of America, whose address is 15925 WEST
NATIONAL AVE., NEW BERLIN, WI 53151 ("Lender")

WITNESSETH, That in consideration of the principal sum of THIRTEEN THOUSAND AND NO/100
(\$ 13,000.00)

the maximum principal indebtedness, or so much thereof as has been advanced by Lender to NELS RONALD RAABOLLE
under a certain note or agreement dated JUNE 20, 1996
and all extensions and renewals thereof ("Note"), together with interest thereon, payable in accordance with
the terms and conditions of the Note, with the balance of the Note, if not sooner paid, due and payable on
JUNE 20, 2011, Borrower does hereby mortgage, grant and convey unto Lender, with power of sale,
FOREVER, all of the land located in the County of WASHINGTON and State of Minnesota
locally described as follows:

See Attachment

has the address of 7006 HOMESTEAD AVE S COTTAGE GROVE
55016 (herein "Property Address").

16-Jul-96
WASHINGTON COUNTY
Registration fee of \$29.00 Paid
MN Conservation Fund \$2.00
S.S. STAFFORD, Auditor-Treasurer

TOGETHER WITH all privileges, hereditaments, easements and appurtenances, all rents, leases, issues and
profits, all awards, and payments made as a result of the exercise of the right of eminent domain, and all
existing and future improvements and fixtures belonging thereto (the "Property").

☒ If checked here, the legal description is continued on the attached sheet.

THIS MORTGAGE SECURES prompt payment to Lender of the indebtedness evidenced by the Note; any
additional sums which are in the future loaned by Lender to Borrower, in documents evidencing the
transaction to be secured by this Mortgage; all costs and expenses of collection or enforcement; the payment
of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this
Mortgage; and the performance of all covenants, conditions and agreements contained in this Mortgage
("Obligations"). Unless otherwise required by law, Lender will satisfy this Mortgage upon request by
Borrower if the Obligations have been paid according to their terms, any commitment to make future
advances secured by this Mortgage has terminated, Lender has terminated any line of credit under which
advances are to be secured by this Mortgage, and all other payments required under this Mortgage and the
Obligations and all other terms, conditions, covenants, and agreements contained in this Mortgage and the
documents evidencing the Obligations have been paid and performed. Borrower shall pay all costs of
recording, if any.

Statutory Covenants. Borrower makes and includes in this Mortgage the statutory covenants and other provisions set forth in
Minnesota Statutes Section 507.15 or in any future Minnesota statute providing for a statutory form of real estate mortgage; and
Borrower covenants with Lender the following statutory covenants: (a) to warrant the title to the Property; (b) to pay the
indebtedness as herein provided; (c) to pay all taxes; (d) to keep all buildings insured against fire for an amount not less than the
unpaid amount of this and all prior, if any, mortgages and against other hazards for the amounts specified by the Lender for the
protection of the Lender, said other hazards being lightning, hazards under the usual extended coverage endorsements, and all other
hazards and risks of direct physical loss occasioned by any cause whatsoever, subject only to the exceptions and exclusions, if any,
agreed to by the Lender, all in form and substance acceptable to the Lender; (e) to keep the Property in repair and no waste shall be
committed; and that (f) the whole of the principal sum shall become due after default, in the payment of any installment of principal
or interest, or of any tax, or in the performance of any other covenant, at the option of the Lender.

ADDITIONAL COVENANTS AND PROVISIONS:

1. Prior Mortgages. Lender, Borrower warrants title to the Property, excepting only restrictions and easements of record,
municipal and zoning ordinances, current taxes and assessments not yet due, and FIRST MORTGAGE TO BANK ONE MORTGAGE
(prior mortgage), and Borrower shall perform
all of Borrower's obligations under any mortgage or other security agreement with a lien which has priority over this Mortgage,
including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other
charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and all leasehold payments
and all ground rents, if any.
2. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness
provided by the Note and late charges as provided in the Note.

14. Receiver. Upon the commencement and during the pendency of an action to foreclose this Mortgage, or enforce any other remedies of Lender under it, without regard to the adequacy or inadequacy of the Property as security for the Obligations, Borrower agrees that the court may appoint a receiver of the Property (including homestead interest) without bond, and may empower the receiver to take possession of the Property and collect the rents, issues and profits of the Property and exercise such other powers as the court may grant until the confirmation of sale, and may order the rents, issues and profits, when so collected, to be held and applied as the court may direct.

15. Expenses. To the extent not prohibited by law, Borrower shall pay all reasonable costs and expenses before and after judgment, including without limitation, attorneys' fees and expense of obtaining title evidence, incurred by Lender in protecting or enforcing its rights under this Mortgage.

16. Successors and Assigns. The obligations of all Borrower(s) are joint and several. This Mortgage benefits Lender, its successors and assigns, and binds Borrower(s) and their respective heirs, personal representatives, successors and assigns. Lender and any other Borrower hereunder may agree to extend, modify, forebear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

17. Entire Agreement. This Mortgage is intended by the Borrower and Lender as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

18. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

19. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

20. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recording hereof.

21. Default; Acceleration; Remedies. The occurrence of a default under the Note; or Borrower's failure to pay any additional amount hereunder; or Borrower's default of any covenant herein, shall all constitute events of default under this Mortgage. Lender shall give notice to Borrower prior to acceleration following Borrower's default under this Mortgage. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is mailed to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedies permitted by applicable law. Borrower specifically authorizes and empowers Lender to foreclose this Mortgage by judicial proceeding or to sell the Property at public auction and to convey the same to a purchaser in fee simple in accordance with state law, and out of the moneys arising from such sale, to retain all sums secured hereby with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Borrower agrees to pay.

If Lender invokes the power of sale, Lender shall cause a copy of a notice of sale to be served upon the person, if any, in possession of the Property; Lender shall publish a notice of sale and the Property shall be sold at public auction. Proceeds of the sale shall be applied in the following order: (a) to all sums secured by this Mortgage; (b) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorneys' fees and costs of title evidence; and (c) the excess, if any, to the person or persons legally entitled thereto.

22. Waiver of Homestead. Borrower hereby waives all right of homestead exemption in the Property.

23. Riders to Mortgage. If one or more riders are executed by Borrower and recorded together with this Mortgage, the covenants and agreement of each such rider shall be incorporated into and shall amend and supplement the covenants and agreement of this Mortgage as if the rider(s) were a part of this Mortgage. [Check applicable box(es)]

☒ Revolving Line of Credit Rider

☐ Condominium Rider

☒ Planned Unit Development Rider

IN WITNESS WHEREOF, Borrower has executed this Mortgage on the day and year first above written.

Nels Ronald Raabolle
NELS RONALD RAABOLLE

STATE OF MINNESOTA

COUNTY OF Hennepin) ss.

This instrument was acknowledged before me this 20TH day of JUNE

19 96, by NELS RONALD RAABOLLE

(marital status) AS A SINGLE PERSON

(SEAL)

Notary Public

My Commission Expires:

This Instrument Was Drafted By and Return To:
Bank One, Milwaukee, N.A.

Bank One, Milwaukee, NA

PO BOX 2033 - ATTN BR/LS

MILWAUKEE, WI 53202

Monument 19649



894387

NY 65-15561-1786

WLSH TITLE

EXHIBIT A - FILE NUMBER 05051693

6 2 5 1 0 5

EXHIBIT A - FILE NUMBER 05051693

1720049434

Barroway

Not Ronald Rabbelle

PROPERTY ADDRESS: 7006 Homestead Avenue South
Cottage Grove, MN 55016

LEGAL DESCRIPTION:

Lot 3, Block 1, Highland Town Homes.

8745A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Nels R. Raabolle,

Debtor: Chapter 13 Case
Case No. BKY 02-92595-GFK.

MEMORANDUM OF LAW

Bank One, Wisconsin Bank One Milwaukee, N.A. (**Movant**) submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on certain real property owned by Debtor. Debtor's confirmed Chapter 13 Plan (**Plan**) requires Debtor to make post-petition mortgage payments directly to Movant, when due. Debtor is delinquent in respect to post-petition mortgage payments for the months of May, 2004 through August, 2004 in the amount of \$770.67.

ARGUMENT

Under §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such [creditor]." 11 U.S.C. §362(d)(1). Debtor has failed to make the payments required by the terms of the Plan. Such a failure constitutes cause for lifting

the automatic stay pursuant to 11 U.S.C. §362(d)(1). First Federal Savings and Loan Association of Minneapolis v. Whitebread, 18 B.R. 192 (Bkrtcy. D. Minn. 1982). Furthermore, debtor has otherwise failed to provide Movant with adequate protection of its interest in the property.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re Tainan, 48 B.R. 250 (Bkrtcy E.D. Pa. 1985); In Re Quinlan, 12 B.R. 516 (Bkrtcy. W.D. Wis. 1981).

Accordingly, Movant is entitled to an order terminating the stay of 11 U.S.C. §362(a) and authorizing it to foreclose its mortgage on the property.

Dated this 30th day of August, 2004.

PETERSON, FRAM AND BERGMAN
A Professional Association

BY: /e/ Michael T. Oberle
Michael T. Oberle
Atty. Reg. #130126

Attorneys for Movant
Suite 300, 50 East Fifth Street
St. Paul, Minnesota 55101
Telephone: (651) 291-8955

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: Nels R. Raabolle,

**Debtor: Chapter 13 Case
Case No. BKY 02-92595-GFK.**

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

I, Michael T. Oberle, employed by **PETERSON, FRAM AND BERGMAN, P.A.**, attorneys licensed to practice in this court, with an office at Suite 300, 50 East Fifth Street, St. Paul, MN, 55101, declare that on August 30, 2004 I served the annexed: a) Notice of Hearing and Motion for Relief from Stay, b) Affidavit in Support of Motion for Relief from Stay, c) Memorandum of Law, and d) proposed Order for Relief upon each of the parties listed below by mailing to each of them a copy of each thereof, enclosed in an envelope, first class postage prepaid, and by depositing same in the post office at St. Paul, Minnesota, directed to them at their last known addresses, as follows:

United States Trustee
300 S 4th St # 1015
Minneapolis MN 55415-1329

Nels R. Raabolle
7006 Homestead Avenue South
Cottage Grove, MN 55016

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Bldg.
12 S 6th Street
Minneapolis MN 55402

Richard J. Pearson, Esq.
P.O. Box 120088
New Brighton, MN 55112

And I declare, under penalty of perjury, that the foregoing is true and correct.

Signed: /e/ Michael T. Oberle

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Nels R. Raabolle,

Debtor: Chapter 13 Case
Case No. BKY 02-92595-GFK.

ORDER FOR RELIEF FROM AUTOMATIC STAY

The above-entitled matter came before the Court on September 20, 2004, on the motion of Bank One, Wisconsin Bank One Milwaukee, N.A. (**Movant**) seeking relief from the automatic stay of 11 U.S.C. §362(a). Based upon the statements of counsel and all of the files, records and proceedings herein, the Court now finds that cause exists entitling Movant to the requested relief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. §362(a) is immediately terminated as to Movant; and, Movant, its successors or assigns, are hereby authorized to foreclose pursuant to Minnesota law that certain Mortgage dated June 20, 1996, filed for record in the office of the County Recorder in and for Washington County, Minnesota, on July 16, 1996, and recorded as Document No. 894387 and covering real property located in Washington County, Minnesota, which is legally described as follows:

Lot 3, Block 1, Highland Town Homes, subject to the burdens and together with the benefits of the Declaration of Easements filed as Document No. 412438 and Declaration of Covenants, Conditions and Restrictions filed as Document No. 412439..

Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated this ____ day of _____, 2004.

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Gregory F. Kishel
United States Bankruptcy Judge